



# the Bizarre Truth about Family Law

## **IF...**

If you can keep your head when all about you  
Are losing theirs and blaming it on you;  
If you can trust yourself when all men doubt you,  
But make allowance for their doubting too;  
If you can wait and not be tired by waiting,  
Or being lied about, don't deal in lies,  
Or being hated don't give way to hating,  
And yet don't look too good, nor talk too wise:

If you can dream – and not make dreams your master;  
If you can think – and not make thoughts your aim.  
If you can meet with Triumph and Disaster  
And treat those two impostors just the same;  
If you can bear to hear the truth you've spoken  
Twisted by knaves to make a trap for fools,  
Or watch the things you gave your life to broken,  
And stoop and build 'em up with worn out tools:

If you can make one heap of all your winnings  
And risk it on one turn of pitch-and-toss,  
And lose, and start again at your beginnings  
And never breathe a word about your loss;  
If you can force your heart and nerve and sinew  
To serve your turn long after they are gone,  
And so hold on when there is nothing in you  
Except the Will which says to them, "Hold on!"

If you can talk with crowds and keep your virtue,  
Or walk with Kings – nor lose the common touch,  
If neither foes nor loving friends can hurt you  
If all men count with you, but none too much;  
If you can fill the unforgiving minute  
With sixty seconds worth of distance run,  
Yours is the earth and everything that's in it,  
And – which is more – you'll be a man my son

- **Rudyard Kipling**

## **THE BIZARRE TRUTH ABOUT THE FAMILY LAW SYSTEM**

**This piece is not an exposé of an individual example of corruption in Family Law but of its prevailing institutional corruptible nature.**

**That matters which are so important and affect the entire lives of families and especially children be handled in this contemptible way is a violation of the whole concept of justice and an indictment on everyone whose responsibility it is to implement the justice system.**

**Concerned citizens must demand that the Family Law Courts be opened up for scrutiny and the 'customs and practices' outlined here be outlawed immediately.**

**We must also demand that Judges be held accountable by the permanent and accurate recording of their decisions and that they must, in person, write and sign the orders and ensure that the Orders are issued contemporaneously,**

24 November 2000

Ireland's National Radio, RTE have done a good job of late to bring to the general public's attention the situation regarding the 'In camera' rule in Family Law and what it actually means. It means the opposite of what most lay people would have expected. It means that the proceedings are carried out in private so that there are no

witnesses to what actually takes place. The reason given is for the privacy of the individual family, especially the children.

What has not been explained though is the surprising fact that, as well as there being no witnesses or press allowed to observe the

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Almost everyone who has not experienced the Family Law Court will have an image of a stenographer sitting diligently typing away on a strange-looking typewriter. This again is almost always not allowed by the Judge even if one of the parents offers to pay for the stenographer themselves.

The Court Clerk makes a file for every Family Law case but the

only records that go into this file are matters that arise outside of the hearing or a copy of a report which is submitted by one of the parties. This report, on cross examination of the author, might be found to be totally unreliable but the criticisms of the report brought out in court are not placed in the file, only the original report.

It gets worse. Not only is nothing recorded of what the solicitors and any witnesses (on oath) say, but the judge's summing up and the actual decision he comes to are also not written down!

myself at a grave disadvantage to be able to earn a living and provide and care for my six children.

If the Judge sends me to prison he will be doing it to protect this inept and corruptible system that pertains in Family Law. Because of the In Camera Rule no one will know if I have gone to prison or why, not the media, not my friends and not the people I have written to about my position.

All I can say is that whatever he does I will continue to work to expose a Family Law system that has no place in a modern Ireland with aspirations of transparency and accountability.

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*These revelations as they unfolded were so shocking to me that I understand that it is hard to accept that this really happens. I do not wish to misrepresent the situation so in case I have erred or for anyone who would like to doublecheck the veracity of any of the statements made here concerning the way that Family Law is conducted, I recommend that you contact Mr PJ Fitzpatrick, Chief Executive Officer, Courts Service Board, Green St Court House, Dublin 7, 01-8886458, or Mr Esmond Smith, President Of Circuit Court, Judges Library, Four Courts, Dublin 7*

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***I will never comply with an Order which is fundamentally different to the one handed down by the Judge because to do so would be in contempt of what he actually decided at the hearing.***

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sitting could be several months away) to bring some level of closure to the proceedings and finally ask the judge, who is supposed to recall all the details of the first hearing from memory.

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***the Court Clerk gives ... the task of writing the Court Order to ... the protagonists, the solicitors, with the solicitor representing the applicant given the 'privilege' of writing the first draft.***

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Judges have to remember what decision they had come to. This is difficult as it is not unheard of for a Judge's summing-up to last over ten minutes. The same procedure as in the original hearing is then reapplied with the same result again if the two parties still can not agree.

Because this is a tedious and costly process (solicitors want paying for every word they say and write and for their court time) and it does not involve

the solicitor's family personally the respondent's solicitor is not inclined to cause much of a fuss even if the tone and wording are substantially different from what the Judge actually said in court. (They will of course never complain about this system as it inherently generates more work and money for them)

The applicant is happy because the Court Order suits them better than the one originally handed down by the Judge and the only real loser is the respondent (and his children). Respondents do complain to their solicitor but the solicitor will usually tell them that there is nothing that can be done. If the respondent continues to complain the solicitor often resigns from the case and sends an exaggerated bill to deflect the issue

The respondent's solicitor is also ever mindful that every now and again they will be the solicitor for the applicant and they do not want to lose the chance of having the privilege of writing the Order in a manner to suit their clients.

This practice is the routine for all Family Law cases in the District and Circuit Courts.

The situation has become even worse in the past few years, with the increased disillusionment, especially amongst fathers, at the ability of solicitors to represent them. This has lead to the current situation where according to the Court Service Board more than one in nine people are representing themselves as 'lay-

litigants.' Court Clerks are not under any pressure to accept these lay-litigants as having the same rights and privileges as solicitors and so the perfecting process is generally denied them. This means in practice that the only solicitor at the hearing gets to write the Court Order with the knowledge that it will not be opposed. The Court Clerk collaborates with this.

At a recent seminar in Dublin on the In-Camera rule, Mr MacDermuida of the Courts Service Board was asked to substantiate that this custom and practice was in operation. It was confirmed by him and by Henry Abbot, S.C., who was also present.

I only unearthed all this because my family has been the victim of this bizarre system. My solicitor failed to make an appeal for me in the time allotted and resigned two weeks after the initial Court hearing. I have been forced to represent myself since so I had to quickly learn how the system works. That has not been easy. It has

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taken me eighteen months of writing on average seven letters a week to the Minister for Justice, to the CEO of the Courts Service, to Susan Denham, Honorary Secretary for the Committee on Judicial Conduct and Ethics, to TDs, to the Ombudsman, to the Attorney

General as well as to the Court Clerk and Judge in my family case.

They all kept quiet about how the system actually operates and each of them said that they could not help me and refused to have an inquiry into how the Court Order issued in my family case was so terribly different from what was consented to by both parties in court and before the Judge.

Next Thursday, 30 November 2000 I have to appear in the Family Law Court in Cavan. The threat

hanging over me is that if I will not comply with a deeply flawed Court Order, that was generated by the above 'custom and practice' I will be sent to prison.

I have told the Judge on three separate occasions that the flawed Order was not created by me and I have done everything in my power to have it corrected and the flawed Order destroyed. He states that it is not within his power to do this even if he admits it is incorrect.

I will never comply with an Order which is fundamentally different to the one handed down by the Judge because to do so would be in contempt of what he actually decided at the hearing. Such is the nature of the flaw that it will also defame me and permanently place

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***with lay-litigants, the only solicitor at the hearing gets to write the Court Order with the knowledge that it will not be opposed. The Court Clerk collaborates with this.***

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It gets even worse. Because nothing is written down and it is the responsibility of the Court Clerk – not the Judge – to issue the Court Order for everyone to follow, and the Court Clerk is rarely actually in court for the hearing (usually an assistant sits in) he gives the task of writing the Court Order to ...

the protagonists, the solicitors, with the solicitor representing the applicant given the 'privilege' of writing the first draft.

Once the Judges have said their piece in Court they walk away from the case and never get to see their Orders in writing as the Orders are sent out without the need of the Judge's signature!

This whole procedure is known by the legal profession as 'custom and practice.'

There is a totally unacceptable reliance on the ability of the applicant's solicitor to perform the 'duty' without making an error of memory or judgement. The temptation to interpret what the Judge said in a way that suits their client does not escape them. The only attempt at a safeguard to prevent this happening is a practice called 'perfecting' whereby, in theory at least, the draft Order drawn up by the applicant's solicitor is supposed to be sent to the respondent's solicitor for their approval.

If they disagree the Court Clerk (who wasn't at the hearing), not the Judge, acts as referee. If the solicitors still disagree one of them has to re-apply for a hearing in front of the same Judge (and the next

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